Members

Rep. Steve Heim, Chairperson Rep. Dave Wolkins Rep. Ryan Dvorak Rep. Matt Pierce Sen. Beverly Gard Sen. Lindel Hume Sen. Marvin Riegsecker Sen. Karen Tallian Dwayne Burke Ellen Tobias Ray Chattin Dave Wyeth Thomas Easterly Steve Murray Sara Davis John Hardwick



ENVIRONMENTAL QUALITY SERVICE COUNCIL

Legislative Services Agency 200 West Washington Street, Suite 301 Indianapolis, Indiana 46204-2789 Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Art Umble

Calvin Davidson

Robert Bond, Attorney for the Council Bernadette Bartlett, Fiscal Analyst for the Council

Authority: IC 13-13-7

MEETING MINUTES¹

Meeting Date: October 30, 2006

Meeting Time: 10:00 AM

Meeting Place: Chamber of the House of

Representatives, State House, 200

W. Washington St.

Meeting City: Indianapolis, Indiana

Meeting Number: 3

Members Present: Rep. Dave Wolkins; Rep. Ryan Dvorak; Sen. Beverly Gard; Sen.

Lindel Hume; Sen. Karen Tallian; Dwayne Burke; Ray Chattin; Thomas Easterly; Steve Murray; Sara Davis; John Hardwick; Art

Umble; Calvin Davidson.

Members Absent: Rep. Steve Heim, Chairperson; Rep. Matt Pierce; Sen. Marvin

Riegsecker; Ellen Tobias; Dave Wyeth.

1. Call to Order

Rep. Wolkins, who chaired the meeting on behalf of Rep. Heim, called the meeting to order at 10:05 AM.

2. Outdoor Wood-burning Furnaces

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.in.gov/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Thomas Easterly presented a report (Exhibit #1) on outdoor wood-burning furnaces (OWF's). The report distinguishes this type of furnace from other types of wood-burning stoves and boilers and summarizes the advantages of OWF's, environmental concerns, the current status of regulation, and options for consideration.

In response to questions from the members of the Council, Mr. Easterly stated that: (1) state rulemaking on OWF's has been halted pending the issuance by the U.S. Environmental Protection Agency (EPA) of model regulations; (2) even in the absence of federal regulation of OWF's, state regulation is appropriate because of the potential problems presented by OWF's, especially in nonattainment areas; (3) he would not have a problem with local restrictions on OWF's that are more stringent than state rules; (4) tools are available to measure particulate emissions from OWF's, but a consensus on the appropriate measurement method has not been reached; and (5) he expects the EPA's model regulations to address required distance between OWF's and buildings, OWF design, and stack height.

Peter Guldberg, president of Tech Environmental, Inc., presented a report (Exhibit #2) on OWF's. The report supports OWF's as a clean and affordable heating source for homeowners in Indiana and opposes state regulation of the installation and use of OWF's.

In response to questions from the members of the Council, Mr. Guldberg stated that: (1) EPA has developed methods to measure particulate emissions and is working on a method specific to OWF's; (2) a typical OWF stack height is eight feet, but stack extensions can be used to raise the emission point above the roof peak of nearby buildings; (3) the EPA model regulation is expected to address methods of increasing the level of wood combustion in OWF's; (4) the cost of an OWF system for an average home is approximately eight thousand dollars; (5) he believes OWF regulation can be handled at the local level; and (6) he cannot recommend whether to adopt the EPA model regulation until it is finalized.

3. Environmental Crimes Task Force

Rep. Dvorak summarized the activities of the Environmental Crimes Task Force. Current environmental crimes statutes are vague and criminalize some actions that violate administrative rules and orders, but do not specifically violate a statute. The Task Force has studied other states' statutes and is formulating a draft under which the violations will be more clearly stated, the punishment will fit the crime, and the Indiana Department of Environmental Management will be able to assist local prosecutors.

4. Regional Sewer Districts

Donald Tribbett, an attorney from Logansport, presented a report addressing some of the regional sewer district (RSD) issues that were considered at the Council's meeting of September 7, 2006. RSD's are intended to facilitate sewer installation and maintenance in rural areas. The expansion of a RSD boundary is initiated by the filing of a petition by an eligible governmental entity, which happened in the case of the proposed expansion of the Twin Lakes Regional Sewer District into Carroll County. Mr. Tribbett believes that the proposed expansion was well publicized, that information on the proposed expansion was readily available to all concerned, that appropriate representation of the expansion area on the RSD board was proposed, and that the proposal includes appropriate accountability and project review. He questions whether a proposal for election of board members is viable, given the expense, the absence of voting areas that coincide with existing political subdivisions, and the potential difficulty in finding candidates. RSD's provide services of general benefit, and testing of individual septic systems to determine whether to substitute

RSD sewer service would be prohibitively expensive.

5. Rules No More Stringent Than Federal Law

Rep. Wolkins made a presentation citing the sources compiled in Exhibit #3. The issue is whether the General Assembly should enact a law that would prohibit rules adopted under IC 13 from being more stringent than corresponding provisions of federal law. Rep. Wolkins noted that approximately one-third of the states have enacted such laws in various forms. The laws generally permit state agency regulation in areas not subject to EPA regulations. Rep. Wolkins believes that state regulators try to meet specific goals without a balanced view of costs and benefits and are not directly accountable to the public. Legislators can identify issues that call for regulation more stringent than corresponding provisions of federal law, and have done so in the areas of wetlands and hazardous air pollutants. Rep. Wolkins believes that federal law should serve as a baseline, and that the General Assembly should determine when and to what extent state law should go beyond that baseline.

Mr. Easterly presented a report (Exhibit #4) on the issue. The report outlines the restrictions that would be placed on state regulators, useful current regulation that would not have been possible if the restriction had been in place, and other possible issues with and possible benefits from the imposition of the restriction. He recommends against the establishment of the restriction, and suggests instead that additional oversight might be instituted to ensure that legal requirements are followed when rules are proposed that go beyond federal requirements.

Sen. Gard addressed the issue and agreed with Mr. Easterly's presentation. She believes that the complexity of federal environmental law requires the attention of state regulators who have greater expertise than legislators. The imposition of the restriction in other states has resulted in increased litigation. Indiana's lengthy environmental rulemaking process provides ample opportunity for public participation and objection. That process already incorporates notice (Exhibit #5) of proposed rules that are more stringent than federal law or that create a restriction or requirement in a subject area not addressed by federal law. The General Assembly has exercised its option to halt rulemaking when necessary.

6. Wastewater and Water Infrastructure Needs

Mr. Martin Wessler, President and CEO, Wessler & Associates Consulting Engineers, presented on behalf of the American Council of Engineering Companies (ACEC) a report (Exhibit #6) concerning wastewater and water infrastructure needs. The report outlines the statewide gap between available and needed funding with respect to combined sewer overflows, wastewater conveyance and treatment, failed septic system repairs, stormwater management, and drinking water systems. The ACEC requests that the Council further study the issue and assist with the sponsorship of a resolution to address the issue in the next legislative session.

7. Recommendations and Final Report

The following recommendations for inclusion in the final report and the final report were approved by voice vote of a majority of the appointed members of the Council:

<u>Mercury Switch Removal and Recovery Program</u> - The General Assembly should investigate ways to provide additional funding to the program.

Great Ships Initiative - IDEM and the administration should continue to work

with other Great Lakes states on the ballast water issue to reach a regional solution.

<u>Regional Sewer District Issues</u> - The EQSC is concerned about properties with private, properly functioning, and legal sewage disposal systems being required to connect to RSD sewage disposal systems.

Outdoor Wood-burning Furnaces - The EQSC:

- (a) is concerned that emissions from OWF's can be a problem, especially in nonattainment areas;
- (b) requests that the Air Pollution Control Board wait to resume OWF rulemaking until the EPA issues model regulations; and
- (c) requests that the commissioner of IDEM report back to the EQSC on the issue.

8. Adjournment

Rep. Wolkins adjourned the meeting at 3:30 PM.